IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Misc. Writ Petition No. 1754(S/S) of 2001
(Old No. 34352 of 1998)

Pratap Singh S/o Dhyan Singh,
R/o Rajkiya Udyan Ramtal,
Nagau Garden (Chakrata),
District-Dehradun ..... Petitioner

Versus

The Director, Horticulture & Food
Processing (Hills), Udyan Bhawan,
Chaubatia, Ranikhet. ..... Respondents

.....

Hon'ble P.C. Verma, J.

This writ petition has been filed by the petitioner seeking writ of certiorari to quash the order dated 25.03.1998, contained in Annexure No.1 to the writ petition, by which the representation of the petitioner has been rejected on the ground that the petitioner was not eligible to be promoted to the post of Class-III from the post of Class-IV employee.

Learned counsel for the petitioner assailed this order on the ground that the petitioner was confirmed in the year 1975, vide order dated 22.01.1975, contained in Annexure No.2 to the writ petition. Therefore, he had completed five years' service. The ground of rejection of the representation on the basis of not fulfilling the five years' required length of service as Mali is incorrect. The learned counsel for the petitioner further submits that the Rules of 1993 were prospective in nature. Prior to that the promotion of Class-IV employee to the post of Class-III in the Departmental was governed by the Office Memorandum dated 17.11.1981. According to this Office memorandum,

10% posts were filled up on the basis of suitability of candidates alongwith sufficient knowledge of Hindi and English. In Para-5 of the writ petition, statement has been made that Munna Lal Pandey was junior to the petitioner and he has been promoted. He also made representation after the promotion of Munna Lal Pandey.

In Para-6 of the counter affidavit it has been stated that Sri Munna Lal Pandey was working as Kaamdar in different pay scale. Therefore, the petitioner cannot claim parity with him.

In Para-6 of the writ petition it has been stated that Sri Anand Giri, Thakur Prasad Maurya, Basant Lal and Deewan Giri were juniors to the petitioner and have been promoted in Class-III category. In reply to the contents of Para-7 of the writ petition, it has been stated by the respondents that the named persons in Para-6 of the writ petition were in the superior pay scale.

It has further been stated that at the relevant time there were only 13 posts and reservation quota for scheduled tribes being only 2%, no reserved post was available to be filled up by the scheduled tribes candidate.

In Paras 6 & 7 of the counter affidavit it has specifically been stated that the persons named in Paras 5 & 6 of the writ petition were seniors to the petitioner.

The petitioner has annexed a list of the persons junior to him who have been promoted. After perusal of the list, it is clear that Basant Lal, Munna Lal Pandey, Anand Giri Thakur Prasad Maurya and Diwan Giri have been

named in Paras 5 & 6 to the writ petition and they were stated to be seniors to the petitioner being in a different pay scale. So far as Hari Ram is concerned, he is senior to the petitioner and was confirmed in the year 1972 while the petitioner was confirmed in the year 1975. Two persons, namely, Daya Kisan Sanwal and Rameshwar Prasad who were confirmed in the year 1976 and 1979 respectively, no statement has been made in the counter affidavit as to how they were promoted, while the petitioner was confirmed in the year 1975 and was not promoted in accordance with the Office Memorandum dated 17.11.1981. In the counter affidavit a defence has been set up that since eligibility prescribed under the rules 1993, the petitioner was not eligible, therefore he could not be promoted. The Rules came into force in the year 1993 and the rules are prospective in nature. Therefore, the vacancies which were to be filled up by promotion were to be filled according to the Office Memorandum covering the field according to which the promotion of Daya Kisan Sanwal and Rameshwar Prasad was made who are juniors to the petitioner. No statement with regard to these two persons has been made in the counter affidavit as to how they were promoted ignoring the claim of the petitioner.

Therefore, the writ petition is allowed. The order dated 25.03.1998, contained in Annexure No.1 to the writ petition, is hereby quashed. The respondents are directed to re-consider the case of the petitioner, if the petitioner is similarly situated as Daya Kisan Sanwal and Rameshwar Prasad. No order as to costs.

(P.C. Verma, J.)

02.09.2003
P.Singh